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For example, captions such as, ''Men/women wanted to train for * * *,'' ''Help Wanted,'' ''Employment,'' ''Business Opportunities,'' and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school's refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program and the circumstances that would constitute grounds for terminating the student's enrollment prior to completion of the program.

[63 FR 42574, Aug. 10, 1998 as amended at, 63 FR 72350, Dec. 31, 1998]

PART 255—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Sec.

255.0 Definitions.
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AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

§ 255.0 Definitions.

(a) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term *endorsements* is therefore generally used hereinafter to cover both terms and situations.

(b) For purposes of this part, an *endorsement* means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

(c) For purposes of this part, the term *product* includes any product, service, company or industry.

(d) For purposes of this part, an *expert* is an individual, group or institution possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

Example 1: A film critic's review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement since it is viewed by readers as a statement of the critic's own opinions and not those of the film producer, distributor or exhibitor. Therefore, any alteration in or quotation from the text of the review which does not fairly reflect its substance would be a violation of the standards set by this part.

Example 2: A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family's clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

Example 3: In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug's ability to deliver fast and lasting pain relief. He purports to speak, not on the basis of his own opinions, but rather in the place of and on behalf of the drug company. Such an advertisement would not be an endorsement.

Example 4: A manufacturer of automobile tires hires a well known professional automobile racing driver to deliver its advertising message in television commercials. In these commercials, the driver speaks of the smooth ride, strength, and long life of the tires. Even though the message is not expressly declared to be the personal opinion of the driver, it may nevertheless constitute an endorsement of the tires. Many consumers will recognize this individual as being primarily a racing driver and not merely a spokesman or announcer for the advertiser. Accordingly, they may well believe the driver would not speak for an automotive product unless he/she actually believed in what he/she was saying and had personal knowledge sufficient to form that belief. Hence

they would think that the advertising message reflects the driver's personal views as well as those of the sponsoring advertiser. This attribution of the underlying views to the driver brings the advertisement within the definition of an endorsement for purposes of this part.

Example 5: A television advertisement for golf balls shows a prominent and well-recognized professional golfer hitting the golf balls. This would be an endorsement by the golfer even though he makes no verbal statement in the advertisement.

[40 FR 22128, May 21, 1975, as amended at 45 FR 3872, Jan. 18, 1980]

§ 255.1 General considerations.

(a) Endorsements must always reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, they may not contain any representations which would be deceptive, or could not be substantiated if made directly by the advertiser. [See Example 2 to Guide 3 (§ 255.3) illustrating that a valid endorsement may constitute all or part of an advertiser's substantiation.]

(b) The endorsement message need not be phrased in the exact words of the endorser, unless the advertisement affirmatively so represents. However, the endorsement may neither be presented out of context nor reworded so as to distort in any way the endorser's opinion or experience with the product. An advertiser may use an endorsement of an expert or celebrity only as long as it has good reason to believe that the endorser continues to subscribe to the views presented. An advertiser may satisfy this obligation by securing the endorser's views at reasonable intervals where reasonableness will be determined by such factors as new information on the performance or effectiveness of the product, a material alteration in the product, changes in the performance of competitors' products, and the advertiser's contract commitments.

(c) In particular, where the advertisement represents that the endorser uses the endorsed product, then the endorser must have been a bona fide user of it at the time the endorsement was given, Additionally, the advertiser may continue to run the advertisement only so long as he has good reason to believe that the endorser remains a bona fide user of the product. [See § 255.1(b) regarding the ''good reason to believe'' requirement.]

Guide 1, Example 1: A building contractor states in an advertisement that he specifies the advertiser's exterior house paint because of its remarkable quick drying properties and its durability. This endorsement must comply with the pertinent requirements of Guide 3. Subsequently, the advertiser reformulates its paint to enable it to cover exterior surfaces with only one coat. Prior to continued use of the contractor's endorsement, the advertiser must contact the contractor in order to determine whether the contractor would continue to specify the paint and to subscribe to the views presented previously.

Example 2: A television advertisment portrays a woman seated at a desk on which rest five unmarked electric typewriters. An announcer says ''We asked Mrs. X, an executive secretary for over ten years, to try these five unmarked typewriters and tell us which one she liked best.''

The advertisement portrays the secretary typing on each machine, and then picking the advertiser's brand. The announcer asks her why, and Mrs. X gives her reasons. Assuming that consumers would perceive this presentation as a ''blind'' test, this endorsement would probably not represent that Mrs. X actually uses the advertiser's machines in her work. In addition, the endorsement may also be required to meet the standards of Guide 3 on Expert Endorsements.

[Guide 1]

[45 FR 3872, Jan. 18, 1980]

§ 255.2 Consumer endorsements.

(a) An advertisement employing an endorsement reflecting the experience of an individual or a group of consumers on a central or key attribute of the product or service will be interpreted as representing that the endorser's experience is representative of what consumers will generally achieve with the advertised product in actual, albeit variable, conditions of use. Therefore, unless the advertiser possesses and relies upon adequate substantiation for this representation, the advertisement should either clearly and conspicuously disclose what the generally expected performance would be in the depicted circumstances or clearly and conspicuously disclose the limited applicability of the endorser's experience to what consumers may

generally expect to achieve. The Commission's position regarding the acceptance of disclaimers or disclosures is described in the preamble to these Guides published in the FEDERAL REGISTER on January 18, 1980.

(b) Advertisements presenting endorsements by what are represented, directly or by implication, to be ''actual consumers'' should utilize actual consumers, in both the audio and video or clearly and conspicuously disclose that the persons in such advertisements are not actual consumers of the advertised product.

(c) Claims concerning the efficacy of any drug or device as defined in the Federal Trade Commission Act, 15 U.S.C. 55, shall not be made in lay endorsements unless (1) the advertiser has adequate scientific substantiation for such claims and (2) the claims are not inconsistent with any determination that has been made by the Food and Drug Administration with respect to the drug or device that is the subject of the claim.

Guide 2, Example 1: An advertisement presents the endorsement of an owner of one of the advertiser's television sets. The consumer states that she has needed to take the set to the shop for repairs only one time during her 2-year period of ownership and the costs of servicing the set to date have been under $10.00. Unless the advertiser possesses and relied upon adequate substantiation for the implied claim that such performance reflects that which a significant proportion of consumers would be likely to experience, the advertiser should include a disclosure that either states clearly and conspicuously what the generally expectable performance would be or clearly and conspicuously informs consumers that the performance experienced by the endorser is not what they should expect to experience. The mere disclosure that ''not all consumers will get this result'' is insufficient because it can imply that while all consumers cannot expect the advertised results, a substantial number can expect them. [See the cross reference in Guide 2(a) regarding the acceptability of disclaimers or disclosures.]

Example 2: An advertiser presents the results of a poll of consumers who have used the advertiser's cake mixes as well as their own recipes. The results purport to show that the majority believed that their families could not tell the difference between the advertised mix and their own cakes baked from scratch. Many of the consumers are actually pictured in the advertisement along with relevant, quoted portions of their statements endorsing the product. This use of the results of a poll or survey of consumers probably represents a promise to consumers that this is the typical result that ordinary consumers can expect from the advertiser's cake mix.

Example 3: An advertisement purports to portray a ''hidden camera'' situation in a crowded cafeteria at breakfast time. A spokesperson for the advertiser asks a series of actual patrons of the cafeteria for their spontaneous, honest opinions of the advertiser's recently introduced breakfast cereal. Even though the words ''hidden camera'' are not displayed on the screen, and even though none of the actual patrons is specifically identified during the advertisement, the net impression conveyed to consumers may well be that these are actual customers, and not actors. If actors have been employed, this fact should be disclosed.

[Guide 2]

[45 FR 3872, Jan. 18, 1980]

§ 255.3 Expert endorsements.

(a) Whenever an advertisement represents, directly or by implication, that the endorser is an expert with respect to the endorsement message, then the endorser's qualifications must in fact give him the expertise that he is represented as possessing with respect to the endorsement.

(b) While the expert may, in endorsing a product, take into account factors not within his expertise (e.g., matters of taste or price), his endorsement must be supported by an actual exercise of his expertise in evaluating product features or characteristics with respect to which he is expert and which are both relevant to an ordinary consumer's use of or experience with the product and also are available to the ordinary consumer. This evaluation must have included an examination or testing of the product at least as extensive as someone with the same degree of expertise would normally need to conduct in order to support the conclusions presented in the endorsement. Where, and to the extent that, the advertisement implies that the endorsement was based upon a comparison such comparison must have been included in his evaluation; and as a result of such comparison, he must have concluded that, with respect to those features on which he is expert and which are relevant and available to an

ordinary consumer, the endorsed product is at least equal overall to the competitors' products. Moreover, where the net impression created by the endorsement is that the advertised product is superior to other products with respect to any such feature or features, then the expert must in fact have found such superiority.

Example 1: An endorsement of a particular automobile by one described as an ''engineer'' implies that the endorser's professional training and experience are such that he is well acquainted with the design and performance of automobiles. If the endorser's field is, for example, chemical engineering, the endorsement would be deceptive.

Example 2: A manufacturer of automobile parts advertises that its products are approved by the ''American Institute of Science.'' From its very name, consumers would infer that the ''American Institute of Science'' is a bona fide independent testing organization with expertise in judging automobile parts and that, as such, it would not approve any automobile part without first testing its efficacy by means of valid scientific methods. Even if the American Institute of Science is such a bona fide expert testing organization, as consumers would expect, the endorsement may nevertheless be deceptive unless the Institute has conducted valid scientific tests of the advertised products and the test results support the endorsement message.

Example 3: A manufacturer of a non-prescription drug product represents that its product has been selected in preference to competing products by a large metropolitan hospital. The hospital has selected the product because the manufacturer, unlike its competitors, has packaged each dose of the product separately. This package form is not generally available to the public. Under the circumstances, the endorsement would be deceptive because the basis for the choice of the manufacturer's product, convenience of packaging, is neither relevant nor available to consumers.

Example 4: The president of a commercial ''home cleaning service'' states in a television advertisement that the service uses a particular brand of cleanser in its business. Since the cleaning service's professional success depends largely upon the performance of the cleansers it uses, consumers would expect the service to be expert with respect to judging cleansing ability, and not be satisfied using an inferior cleanser in its business when it knows of a better one available to it. Accordingly, the cleaning service's endorsement must at least conform to those consumer expectations. The service must, of course, actually use the endorsed cleanser. Additionally, on the basis of its expertise, it must have determined that the cleansing ability of the endorsed cleanser is at least equal (or superior, if such is the net impression conveyed by the advertisement) to that of competing products with which the service has had experience and which remain reasonably available to it. Since in this example, the cleaning service's president makes no mention that the endorsed cleanser was ''chosen,'' ''selected,'' or otherwise evaluated in side-by-side comparisons against its competitors, it is sufficient if the service has relied solely upon its accumulated experience in evaluating cleansers without having to have performed side-by-side or scientific comparisons.

Example 5: An association of professional athletes states in an advertisement that it has ''selected'' a particular brand of beverages as its ''official breakfast drink''. As in Example 4, the association would be regarded as expert in the field of nutrition for purposes of this section, because consumers would expect it to rely upon the selection of nutritious foods as part of its business needs. Consequently, the association's endorsement must be based upon an expert evaluation of the nutritional value of the endorsed beverage. Furthermore, unlike Example 4, the use of the words ''selected'' and ''official'' in this endorsement imply that it was given only after direct comparisions had been performed among competing brands. Hence, the advertisement would be deceptive unless the association has in fact performed such comparisons between the endorsed brand and its leading competitors in terms of nutritional criteria, and the results of such comparisons conform to the net impression created by the advertisement.

[Guide 3]

[40 FR 22128, May 21, 1975]

§ 255.4 Endorsements by organizations.

Endorsements by organizations, especially expert ones, are viewed as representing the judgment of a group whose collective experience exceeds that of any individual member, and whose judgments are generally free of the sort of subjective factors which vary from individual to individual. Therefore an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. Moreover, if an organization is represented as being expert, then, in conjunction with a proper exercise of its expertise in evaluating the product under § 255.3 of this part (Expert endorsements), it must

utilize an expert or experts recognized as such by the organization or standards previously adopted by the organization and suitable for judging the relevant merits of such products.

Example: A mattress seller advertises that its product is endorsed by a chiropractic association. Since the association would be regarded as expert with respect to judging mattresses, its endorsement must be supported by an expert evaluation by an expert or experts recognized as such by the organization, or by compliance with standards previously adopted by the organization and aimed at measuring the performance of mattresses in general and not designed with the particular attributes of the advertised mattress in mind. (See also § 255.3, Example 5.)

[Guide 4]

[40 FR 22128, May 21, 1975]

§ 255.5 Disclosure of material connections.

When there exists a connection between the endorser and the seller of the advertised product which might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience) such connection must be fully disclosed. An example of a connection that is ordinarily expected by viewers and need not be disclosed is the payment or promise of payment to an endorser who is an expert or well known personality, as long as the advertiser does not represent that the endorsement was given without compensation. However, when the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.

Example 1: A drug company commissions research on its product by a well-known research organization. The drug company pays a substantial share of the expenses of the research project, but the test design is under the control of the research organization. A subsequent advertisement by the drug company mentions the research results as the ''findings'' of the well-known research organization. The advertiser's payment of expenses to the research organization need not be disclosed in this advertisement. Application of the standards set by Guides 3 and 4 provides sufficient assurance that the advertiser's payment will not affect the weight or credibility of the endorsement.

Example 2: A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must of course comply with § 255.1; but even though the compensation paid the endorser is substantial, neither the fact nor the amount of compensation need be revealed.

Example 3: An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his ''spontaneous'' opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein ''steak''. This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the ''hidden camera'' only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for allowing the use of their opinions in advertising, these facts need not be disclosed.

[Guide 5]

[45 FR 3873, Jan. 18, 1980]

PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.
259.1 Definitions.
259.2 Advertising disclosures.

AUTHORITY: 15 U.S.C. 41–58.

§ 259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *New automobile.* Any passenger automobile or light truck for which a fuel economy label is required under